Seconded by Mr. Prince.

Mr. Thanu Pillai: It is a mere mistake in drafting and the amendment may well be accepted.

Carried.

Further consideration of the Bill was adjourned to the next ordinary meeting.

HINDU WILLS BILL.

In introducing the Bill, Mr. Muthunayagom Pillai said:—

The object of this Bill is to confer the power of testamentary disposition of property on certain classes of the people of this country who do not at present possess that power; to recognise the power with regard to certain other classes who already possess it; and to regulate the exercise of the privilege, with reference to them all, by the imposition of certain restrictions and the enactment of certain rules.

The Hindus of Travancore who are the followers of the Makkathayam law of inheritance conduct themselves very much like their fellow-castemen in the neighbouring British territories; and among the several usages that are common to them, the practice of disposing of property by Will, which has prevailed in British India for above half a century, has to a certain extent prevailed here too and instances of such dispositions have not unfrequently come before our Courts. In the year 1065, however, in a case coming from Shencottah, the competency of Hindus to make Wills was for the first time questioned and our High Court ruled that Hindus in Travancore were not competent to make valid dispositions of property by Will (vide T. L. R. Volume VI p. 146). It is needless, for our present purpose, to stop to consider how far Hindu Law and usage warrant the conclusion arrived at by the majority of the learned Judges of the High Court.

All that we need enquire is, whether the exercise of the power of testation would be productive of good to society in this country and whether the legislature should not come to the aid of the Hindus of this country who have been declared by the Courts not to possess the privilege under the law as it stands. That in British India the power in question has been productive of immense good, is the opinion of several eminent men, among whom I may refer to Mr. W. Stokes, who says that it cannot be questioned that the exercise of the power has produced in India, the same beneficial effects which it has produced in England and elsewhere, by stimulating the circulation of property and quickening the stagnation of society. If the system has worked so well there, we may naturally expect similar results here, and it seems to me that no time should be lost in placing the Makkathayam Hindus of Travancore on a footing of equality with their kinsmen in British India, on a matter of such vital consequence.

Turning next to the case of the followers of the Marumakkathayam law of inheritance, the authorities are not quite agreed as to whether at present, they have the power of disposing of property by Will. Dr. Ormsby in his "Outlines of Marumakkathayam Law" says: "The power of disposing by Will of self-acquired property is not recognised in the case of Malayalees by the law of Travancore." There are no cases quoted by him in support of this assertion; and there are no cases on the subject, as far as I am aware, in any of the published reports of Travancore decisions. The law in the Madras Presidency seems to be yet unsettled. In a Malabar case, *Alami* v. *Komu* (I. L. R. 12 Madras p. 126), it was held that the last surviving member of a Malabar Tarwad can make a valid testamentary disposition of the Tarwad property. In *Mannen* v. *Kelappan* (S. A. 534 of 1878 I. M. L. R. p. 25) it was ruled that self-acquisitions undisposed of during the life-time of the testator will not pass under Will. The soundness of this latter decision seems to have been doubted in the later case of *Kuttyasan* v. *Mayan* (I. L. R. 14 Madras p. 495). The Bill recently introduced in the Legislative Council of Madras to declare the testamentary powers of persons governed by the Marumakkathayam law of inheritance opens with the following preamble:—"Whereas doubts have arisen regarding the power of persons governed by the Marumakkathayam or the Alyasantana Law of inheritance to dispose of their separate or self-acquired property by Will; and whereas it is expedient to remove such doubts, it is hereby enacted &c." And the Bill does not purport to *confer* the privilege of testation, but is merely declaratory in form.

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Not being confident that the Courts would regard testamentary dispositions as valid, Marumakkathayees in Travancore have hitherto evidently avoided venturing on making Wills and have made gifts or fictitious sales and mortgages do duty for Wills. But it is the general feeling among them that these substitutes do not fully meet the requirements of their peculiar position, and they are very desirous of being invested with the power of making settlements to take effect after death. In support of this view, I may mention that the members of the Malabar Marriage Commission have reported that they and, practically, all educated people following the Marumakkathayam law, were agreed as to the advisability of conferring testamentary powers on Marumakkathayees. It seems to me that with their existing marriage laws the power of making testamentary dispositions is needed by the Marumakkathayees even more so than the Makkathayees, and if it is thought that the power is not possessed by them under the law, it is desirable that it should be conferred on them by the Legislature.

As regards Christians and Mahomedans in Travancore, I need hardly point out that their right to make Wills has always been recognised by our Courts and their Wills, no matter how made, have always been given effect to. They are guided by no rules and are not required to conform to any.

If we are agreed, Gentlemen, that the power of testation must be conferred on some and be formally recognised as to others, that leads us next to consider what are the securities to be provided for the right and proper exercise of the power in question. As the law at present stands, even writing, signature and attestation, which are the most elementary requirements for preventing frauds, are not necessary for testamentary dispositions. Before the Hindu Wills Act became law in India it was so there too. The High Court of Bombay decided that the Hindu Will need not be attested and the High Court of Madras declared that a Hindu's Will need not be in writing. Commenting on these decisions, a learned writer says—"Considering the facilities with which frauds in setting up nuncupative Wills are attended, (for false swearing is more easy to perpetrate and more difficult to detect than forgery) it may perhaps be doubted, whether the benefits arising from the introduction, among the Natives, of the testamentary power are not counterbalanced by the encouragement which its recognition by our Courts at present affords to perjury. Moreover the evidence that sets up a false oral Will may practically revoke a true written one. Even in the case of a genuine testamentary disposition by word of mouth, the certainty of writing is replaced by the frailty of memory." It will thus be apparent that writing, signing and attesting are essential and the Bill accordingly makes these compulsory. But the Bill goes further than this. The deposit and registration of Wills, which is optional under the law of registration, is now sought to be made compulsory. The reason for this proposed change is that with regard to a large section of the people of this country who would hereafter take advantage of the power of making Wills, or who as the objects of such power, would come in as legatees and executors, it would be an altogether new channel that is opened to them for coming by the property of another; and it is not unlikely that fictitious and spurious Wills may be set up by the disappointed kinsmen of a deceased proprietor; and it is therefore best to minimize the facilities for the commission of forgery and the perpetration of frauds. One of my learned brethren in the Council would have me go even further, and suggested that the Bill should insist on the taking out of a Probate as a further requisite of a valid Will. While I am prepared to concede the utility of providing this further security, I entertain serious doubts as to the expediency of doing so in this country. It seems to me that the power now conferred being so novel to many, we ought to move slowly and gradually, and begin by introducing a law which is simple in its working; and when the people are sufficiently familiar with the power, it may be time enough, to legislate further and elaborate the same, if necessary. In support of this view, I may mention that under the law in British India, Wills made by Hindus before the passing of Act XXI of 1870, needed no probate, and it was not obligatory on executors or legatees under them to take out probate or Letters of Administration in order to establish their rights in a Court of Justice (Vide I. L. R. 14 Calcutta p. 37, *Crishnen Kunkur Roy* v. *Rai Mohani Rai*; and this is the law even now for all India, excepting the Presidency towns.

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With the object of making it as simple as can be, I have, in drafting the Bill, endeavoured to make it very concise, and have confined it to a few of the leading provisions only of the corresponding law in British India on the subject. It might appear at first sight that the Bill is far too brief. But it has to be remembered that most of the sections of the British Act are no more than codified enunciations of the well-recognised principles of Common Law and Equity, and our copying them all here, is hardly necessary, as our courts might as well follow the precedents from the original source direct, when individual cases involving any of those principles arise for adjudication. It will also be noted that a large portion of the British Act is taken up with the rules on the subject of Probate and Administration. Having thought it expedient for the reasons already given, not to introduce here the cumbrous procedure involved in the proving of Wills, and having substituted Registration in lieu of it, I have omitted in the Bill all reference to Probate and Administration and also to the subject of the character and ex-officio powers of an Executor under the Will, who is left with no greater powers than a Manager whose powers are well understood under the general principles of law.

The numerous sections of the British Act relating to the construction and interpretation of Wills do not find a place in the Bill, either. "Natives are generally so vague and inaccurate in using words in their writings" that it is not safe to bind our Courts to any fixed construction or interpretation. The Courts should be left free to construe and carry out the testator's intentions.

I have only one other point to which I wish to draw your attention, Gentlemen. You will have noticed that the provisions of this Bill do not affect persons who are not domiciled in Travancore. The formalities to be complied with under our Bill are in some respects more stringent than those relating to Wills in British India and elsewhere; and it appears to me to be undesirable in a matter such as this, to make foreigners conform to a new set of rules, differing in important particulars from those they have for centuries been accustomed to be subject to, in their own countries. For instance, an European owning an estate in Travancore may be living in England and may have made a Will there just before his death leaving his property here to a particular person. The law of England does not require registration of a Will and it would not occur either to the testator or the legatee to have the Will registered. Under this Regulation, however, such a Will would be void if not duly registered within the appointed time. This would certainly be hard; and it has therefore been considered necessary to provide against it, and to enact that Wills executed by any such person shall be allowed to take effect as a testamentary disposition of any property situate in Travancore, provided the said Will has been executed according to the requirements of the law of the country of his domicile. With these remarks I beg to introduce the Bill.

After a short discussion regarding the scope of the measure, he introduced the Bill.

Mr. Muthunayagom Pillai: I would further ask that the Bill with the statement of Objects and Reasons be published in the Gazette for general information.

Seconded by Mr. Ramanatha Row.

Carried.

THE BILL TO AMEND THE FOREST REGULATION (II OF 1068.)

Mr. Thanu Pillai: I beg to ask for leave to introduce a small Bill to amend the Forest Regulation. From the statement of Objects and Reasons which has been circulated with the Bill, you will have noticed why the Bill is brought forward. The second part of the amendment proposed is purely verbal and is intended to cure defective wording—to make the punitive provisions correctly correspond with the prohibitions imposed.

It is in deference to a suggestion from the Conservator of Forests that I have proposed the first portion.

Sections 7 and 21 deal with fires in Forests but only so far as Reserved tracts are concerned. But it has been urged that the provisions should be extended to tracts which are proposed to be reserved (Sec. 6) but which have not yet

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